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SENATE BILL

No. 1399

Introduced by Senator Leno

(Principal coauthors: Assembly Members Bonnie Lowenthal and
Ammiano)

February 19, 2010

An act to add Section 2065 to, and to add Title 2.3 (commencing with Section 3550) to Part 3 of, the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1399, as amended, Leno. Parole: medical parole: permanently medically incapacitated inmates.

Existing law generally regulates the granting and conditioning of parole, and places the duty to monitor parolees on the Division of Adult Parole Operations. Existing law, the Victim's Bill of Rights Act of 2008: Marsy's Law, as added by Proposition 9 at the November 4, 2008, statewide general election, provides that the Board of Parole Hearings

or its successor in interest shall be the state's parole authority and shall be responsible for protecting victims' rights in the parole process.

This bill would provide that, except as specified, any prisoner who the head physician for the institution where the prisoner is located determines, as provided, is permanently medically incapacitated with a medical condition that renders the prisoner permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care, and that incapacitation did not exist at the time of sentencing, shall be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. Those provisions would not apply to any prisoner sentenced to death or life in prison without possibility of parole or to any inmate who is serving a sentence for which parole pursuant to this bill is prohibited by any initiative statute. The bill would provide that these provisions shall not be construed to alter or diminish the rights conferred under the Victim's Bill of Rights Act of 2008: Marsy's Law. The bill would require a physician employed by the Department of Corrections and Rehabilitation who is the primary care provider for a prisoner to recommend that the prisoner be referred to the Board of Parole Hearings for consideration for medical parole if the physician believes the prisoner meets the medical criteria for medical parole. The bill would provide that the Board of Parole Hearings or the Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to parole pursuant to this bill, including, but not limited to, the requirement that parolees submit to electronic monitoring.

Existing law generally provides for the duties and functions of the Department of Corrections and Rehabilitation. Existing law provides that the State Department of Health Care Services is designated as the state agency with full power to supervise every phase of the administration of health care services and medical assistance for which grants-in-aid are received from the federal government or made by the state in order to secure full compliance with the applicable provisions of state and federal laws.

This bill would require the Department of Corrections and Rehabilitation to, among other things, seek to enter into memoranda of understanding with the Social Security Administration and the State Department of Health Care Services, in addition to certain other entities, to facilitate prerelease agreements to help inmates initiate benefits claims, as specified. ~~The bill would require the department to reimburse~~

counties on a quarterly basis for the nonfederal share of Medi-Cal costs incurred for individuals who have been granted medical parole, and provide, or provide reimbursement for, services associated with public guardianship of medical parolees. *The bill would require the department to reimburse county public hospitals on a quarterly basis for the nonfederal share of Medi-Cal costs incurred by the county for individuals who have been granted medical parole and the county costs for providing health care services that are not allowable under Medi-Cal but are required by the state to be furnished to eligible persons who have been granted medical parole, including public guardianship health care services. The bill would require the department to provide, or provide reimbursement for, services associated with public guardianship of medical parolees, as specified.* The bill would authorize the department to provide supplemental reimbursements to providers, as specified. The bill would require the department to establish contracts with appropriate medical providers in cases where medical parolees are ineligible for Medi-Cal, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2065 is added to the Penal Code, to read:
2 2065. (a) The Department of Corrections and Rehabilitation
3 shall complete all of the tasks associated with inmates granted
4 medical parole pursuant to Section 3550 that are specified in this
5 section. Subdivisions (c) and (d) shall apply only to the period of
6 time that inmates are on medical parole.
7 (b) The department shall seek to enter into memoranda of
8 understanding with the Social Security Administration and the
9 State Department of Health Care Services, in addition to other
10 federal, state, or county entities necessary to facilitate prerelease
11 agreements to help inmates initiate benefits claims.
12 (c) This subdivision shall be implemented in a manner that is
13 consistent with federal Medicaid law and regulations. The Director
14 of Health Care Services shall seek any necessary federal approvals
15 for the implementation of this subdivision. ~~This subdivision~~
16 *Claiming of federal Medicaid funds* shall be implemented only to
17 the extent that federal approval, if necessary, is obtained. If an

1 inmate is granted medical parole and found to be eligible for
2 Medi-Cal, all of the following shall apply:

3 ~~(1) The department shall reimburse counties on a quarterly basis~~
4 ~~for the nonfederal share of Medi-Cal costs incurred for individuals~~
5 ~~who have been granted medical parole.~~

6 ~~(2) The department shall directly provide, or provide~~
7 ~~reimbursement for, services associated with public guardianship.~~

8 ~~(3) The department may provide supplemental reimbursements~~
9 ~~to providers amounting to a total reimbursement that is allowable~~
10 ~~pursuant to Section 5023.5.~~

11 *(1) The hospital shall first bill Medi-Cal to obtain any available*
12 *reimbursement.*

13 *(2) Upon providing an acceptable invoice, the department shall*
14 *reimburse county public hospitals on a quarterly basis for all of*
15 *the following:*

16 *(A) The nonfederal share of Medi-Cal costs incurred by the*
17 *county for individuals who have been granted medical parole.*

18 *(B) An amount equal to the county costs for providing health*
19 *care services that are not allowable under Medi-Cal but are*
20 *required by the state to be furnished to eligible individuals who*
21 *have been granted medical parole, including public guardianship*
22 *health care services.*

23 *(3) The department shall directly provide, or provide*
24 *reimbursement on a quarterly basis, after invoicing, for allowable*
25 *costs that cannot be claimed as Medi-Cal expenditures under*
26 *targeted case management and the nonfederal share of services*
27 *associated with public guardianship that can be claimed as*
28 *Medi-Cal expenditures.*

29 *(4) The department may provide supplemental reimbursements*
30 *to providers amounting to a total reimbursement that is allowable*
31 *pursuant to Section 5023.5. These supplemental reimbursements*
32 *may only be paid to the extent they comply with federal and state*
33 *law and regulations. The Director of Health Care Services may*
34 *work with the department to modify these supplemental*
35 *reimbursements to the extent necessary to comply with federal and*
36 *state law and regulations.*

37 ~~(4)~~

38 *(5) The department and the State Department of Health Care*
39 *Services shall work together to do all of the following:*

1 (A) Maximize federal financial participation for service costs,
2 administrative costs, and targeted case management costs incurred
3 pursuant to this section.

4 (B) Determine whether medical parolees shall be exempt from
5 mandatory enrollment in managed health care, *including county*
6 *organized health plans*, and determine the proper prior
7 authorization process for individuals who have been granted
8 medical parole.

9 ~~(5)~~

10 (6) The department may submit retroactive Medi-Cal claims to
11 the State Department of Health Care Services for allowable
12 certified public expenditures ~~incurred by public hospitals~~ that have
13 been reimbursed by the department. *The department shall work*
14 *with the Director of Health Care Services to ensure that any*
15 *process established regarding the submission of retroactive claims*
16 *shall be in compliance with state and federal law and regulations.*

17 (d) If an inmate is granted medical parole and found to be
18 ineligible for Medi-Cal, all of the following shall apply:

19 (1) The department shall consider the income and assets of a
20 medical parolee to determine whether the individual has the ability
21 to pay for the cost of ~~their~~ *his or her* medical care.

22 (2) If the individual is unable to pay the cost of their medical
23 care, the department shall establish contracts with appropriate
24 medical providers and pay costs that are allowable pursuant to
25 Section 5023.5.

26 (3) The department shall retain the responsibility to perform
27 utilization review and cost management functions ~~that they~~
28 ~~currently perform~~ *it currently performs* under existing contracts
29 with health care facilities.

30 (4) The department shall directly provide, or provide
31 reimbursement for, services associated with public guardianship.

32 (e) ~~The~~ *Notwithstanding the rulemaking provisions of Chapter*
33 *3.5 (commencing with Section 11340) of Part 1 of Division 2 of*
34 *the Government Code, the department and the State Department*
35 *of Health Care Services may implement this section by means of*
36 *all-facility letters, all-county letters, or similar instructions, in*
37 *addition to adopting regulations, as necessary.*

38 SEC. 2. Title 2.3 (commencing with Section 3550) is added to
39 Part 3 of the Penal Code, to read:

TITLE 2.3. MEDICAL PAROLE

3550. (a) Notwithstanding any other provision of law, except as provided in subdivision (b), any prisoner who the head physician of the institution where the prisoner is located determines, as provided in this section, is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care, and that incapacitation did not exist at the time of sentencing, shall be granted medical parole if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety.

(b) Subdivision (a) shall not apply to any prisoner sentenced to death or life in prison without possibility of parole or to any inmate who is serving a sentence for which parole, pursuant to subdivision (a), is prohibited by any initiative statute. The provisions of this section shall not be construed to alter or diminish the rights conferred under the Victim's Bill of Rights Act of 2008: Marsy's Law.

(c) When a physician employed by the Department of Corrections and Rehabilitation who is the primary care provider for an inmate identifies an inmate that he or she believes meets the medical criteria for medical parole specified in subdivision (a) the primary care physician shall recommend to the head physician of the institution where the prisoner is located that the prisoner be referred to the Board of Parole Hearings for consideration for medical parole. Within 30 days of receiving that recommendation, if the head physician of the institution concurs in the recommendation of the primary care physician, he or she shall refer the matter to the Board of Parole Hearings using a standardized form and format developed by the department, and if the head physician of the institution does not concur in the recommendation, he or she shall provide the primary care physician with a written explanation of the reasons for denying the referral.

(d) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for medical parole by contacting the head physician at the prison or the department. Within 30 days of receiving the request, the head physician of the

1 institution shall, in consultation with the prisoner's primary care
2 physician, make a determination regarding whether the prisoner
3 meets the criteria for medical parole as specified in subdivision
4 (a) and, if the head physician of the institution determines that the
5 prisoner satisfies the criteria set forth in subdivision (a), he or she
6 shall refer the matter to the Board of Parole Hearings using a
7 standardized form and format developed by the department. If the
8 head physician of the institution does not concur in the
9 recommendation, he or she shall provide the prisoner or his or her
10 family member or designee with a written explanation of the
11 reasons for denying the application.

12 (e) The Department of Corrections and Rehabilitation shall
13 complete parole plans for inmates referred to the Board of Parole
14 Hearings for medical parole consideration. The parole plans shall
15 include, but not be limited to, the inmate's plan for residency and
16 medical care.

17 (f) Notwithstanding any other law, medical parole hearings shall
18 be conducted by two-person panels consisting of at least one
19 commissioner. In the event of a tie vote, the matter shall be referred
20 to the full board for a decision. Medical parole hearings may be
21 heard in absentia.

22 (g) Upon receiving a recommendation from the head physician
23 of the institution where a prisoner is located for the prisoner to be
24 granted medical parole pursuant to subdivision (c) or (d), the board,
25 as specified in subdivision (f), shall make an independent judgment
26 regarding whether the conditions under which the inmate would
27 be released pose a reasonable threat to public safety, and make
28 written findings related thereto.

29 (h) Notwithstanding any other provision of law, the board or
30 the Division of Adult Parole Operations shall have the authority
31 to impose any reasonable conditions on prisoners subject to medical
32 parole supervision pursuant to subdivision (a), including, but not
33 limited to, the requirement that the parolee submit to electronic
34 monitoring. As a further condition of medical parole, pursuant to
35 subdivision (a), the parolee may be required to submit to an
36 examination by a physician selected by the board for the purpose
37 of diagnosing the parolee's current medical condition. In the event
38 such an examination takes place, a report of the examination and
39 diagnosis shall be submitted to the board by the examining
40 physician. If the board determines, based on that medical

1 examination, that the person's medical condition has improved to
2 the extent that the person no longer qualifies for medical parole,
3 the board shall return the person to the custody of the department.

4 (1) Notwithstanding any other provision of law establishing
5 maximum periods for parole, a prisoner sentenced to a determinate
6 term who is placed on medical parole supervision prior to the
7 earliest possible release date and who remains eligible for medical
8 parole, shall remain on medical parole, pursuant to subdivision
9 (a), until that earliest possible release date, at which time the
10 parolee shall commence serving that period of parole provided by,
11 and under the provisions of, Chapter 8 (commencing with Section
12 3000) of Title 1.

13 (2) Notwithstanding any other provisions of law establishing
14 maximum periods for parole, a prisoner sentenced to an
15 indeterminate term who is placed on medical parole supervision
16 prior to the prisoner's minimum eligible parole date, and who
17 remains eligible for medical parole, shall remain on medical parole
18 pursuant to subdivision (a) until that minimum eligible parole date,
19 at which time the parolee shall be eligible for parole consideration
20 under all other provisions of Chapter 8 (commencing with Section
21 3000) of Title 1.

22 (i) The Department of Corrections and Rehabilitation shall, at
23 the time a prisoner is placed on medical parole supervision pursuant
24 to subdivision (a), ensure that the prisoner has applied for any
25 federal entitlement programs for which the prisoner is eligible,
26 and has in his or her possession a discharge medical summary, full
27 medical records, parole medications, and all property belonging
28 to the prisoner that was under the control of the department. Any
29 additional records shall be sent to the prisoner's forwarding address
30 after release to health care-related parole supervision.

31 (j) The provisions for medical parole set forth in this title shall
32 not affect an inmate's eligibility for any other form of parole or
33 release provided by law.